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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

HAROLD KELLY MURPHY,

Plaintiff.

v.

SOUTHERN ENERGY HOMES, INC.,
et al.,

Defendants.

Case No.: 2:06-cv-618-MEF

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1 by either party hereto provided for by
2 the Federal Rules of Civil Procedure.

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4 * * * * *

5

6

BOBBY PARKS

7

The witness, having first been duly
8 sworn or affirmed to speak the truth,
9 the whole truth, and nothing but the
10 truth, testified as follows:

11

THE REPORTER: Usual

12

stipulations?

13

MR. SIMPSON: Sure.

14

EXAMINATION

15

BY MR. SIMPSON:

16

Q. Almost good afternoon. Good morning.

17

A. Yes, sir.

18

Q. We've met before. Let me start by

19

marking some exhibits and we'll just

20

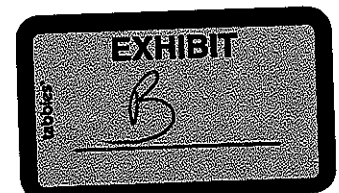
jump right into this. Let me mark

21

Exhibit #1.

22

(Defendants' Exhibit #1 was



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4 reviews document)

5 A. Yes, sir, I believe it to be.

6 Q. Does that represent the sum total of
7 your field notes for all visits?

8 A. Yes, sir, it does.

9 (Defendants' Exhibit #2 was
10 marked for identification.)

11 Q. Let me show you what I'm going to mark
12 as Exhibit #2 and see if you can
13 identify this as your first report
14 rendered in the Murphy case.

15 A. Yes, sir, I believe it to be.

16 (Defendants' Exhibit #3 was
17 marked for identification.)

18 Q. And let me mark as Exhibit #3 what I
19 believe to be your second Murphy
20 report. Can you identify that?

21 A. Yes, sir. That's the follow-up visit.

22 MR. GOULD: Off the record
23 real quick, Scott.

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1 (Off-the-record discussion)

2 MR. SIMPSON: Back on the
3 record.

4 Q. With regard to the work product you've
5 done in Murphy, would Exhibits #1, #2,
6 and #3 be the sum total of your work
7 product?

8 A. I believe that to be accurate.

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- 9 Q. Let me show you what I have marked as
10 Exhibit #4.
11 (Defendants' Exhibit #4 was
12 marked for identification.)
13 Q. This is the -- what I believe to be Roy
14 Bonney report in the Murphy home?
15 A. Yes, sir.
16 Q. Have you ever seen that before?
17 A. No, sir, I've not.
18 Q. Did you send your report to Mr. Bonney?
19 A. No, sir, I did not.
20 Q. So he did not send his report to you
21 nor did you send your report to him?
22 A. No, sir. I think that's accurate.
23 Q. Did you give him your field notes?

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- 1 A. No, sir.
2 Q. Did he give you his field notes?
3 A. No, sir.
4 Q. Let me mark as Exhibit #5 what your
5 attorney has represented is the Kondner
6 report, Robert Kondner, K-O-N-D-N-E-R.
7 A. Yes, sir.
8 (Defendants' Exhibit #5 was
9 marked for identification.)
10 Q. Have you seen that before?
11 A. No, sir, I have not.
12 Q. Have you exchanged reports or field
13 notes with Kondner in the Murphy case?

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14 A. No, sir, I have not.

15 Q. Did you play any part in writing the
16 text of the Kondner report?

17 A. As I said, I've not even seen it, no,
18 sir, so I did not.

19 Q. Have you seen any Kondner report
20 before?

21 A. I really don't recall.

22 Q. So it's fair to say, in rendering your
23 report, you didn't rely on anything

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1 that Mr. Bonney or Mr. Kondner said or
2 did?

3 A. That is correct.

4 Q. And would you agree with me that since
5 you had no exchange of materials with
6 Bonney or Kondner, you did not intend
7 for them to rely on anything you said
8 or did?

9 MR. GOULD: I'm going to
10 object, because he does
11 not know what they
12 relied on.

13 MR. SIMPSON: Oh, I'm
14 wondering what he
15 intended. That was my
16 question.

17 Q. Did you intend for them to rely on
18 anything you did?

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- 19 A. My intent was -- I wrote my report for
20 the Beasley-Allen firm. So I had no
21 intents of any kind that would relate
22 to Mr. Bonney or Mr. Kondner.
23 Q. But you didn't have any kind of E-mail

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- 1 traffic or give any kind of reports to
2 them informally that they could have
3 used in connection with their formal
4 reports in this case?
5 A. I don't think I've ever sent my
6 reports -- that I can recall, I don't
7 believe that I've ever sent my reports
8 to anyone other than an attorney here
9 at Beasley-Allen, whether that be
10 Gibson Vance or Lance Gould.
11 Q. What is an IEP?
12 A. IEP? What context are you using that
13 in?
14 Q. Well, in the mold remediation business,
15 do you know what an IEP is?
16 A. I don't know that that's a term I can
17 recall right now.
18 Q. Are you an IEP?
19 A. Well, if I don't recognize the term, I
20 really don't know if I am or not.
21 Q. Do you recognize the term "indoor
22 environmental professional"?
23 A. I've not seen that classification

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- 1 anywhere.
- 2 Q. Are you a qualified indoor
- 3 environmental professional?
- 4 A. Can you give me a definition of what
- 5 that would be?
- 6 Q. Well, unfortunately, I get to ask the
- 7 questions. If you know yourself to be
- 8 one, tell me. If you don't know the
- 9 answer, then that's fine, too.
- 10 A. Indoor environmental --
- 11 Q. Professional.
- 12 A. -- professional. As I've said, I've
- 13 not heard that acronym before, so I can
- 14 only state that I've not received any
- 15 certifications that use that acronym.
- 16 Q. Can you tell me what kinds of molds are
- 17 soil molds?
- 18 A. No, sir.
- 19 Q. Can you tell me what a hydrophilic mold
- 20 is, H-Y-D-R-O-P-H-I-L-I-C?
- 21 A. No, sir.
- 22 Q. Can you tell me what a toxigenic mold
- 23 is, T-O-X-I-G-E-N-I-C?

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- 1 A. Toxigenic. Well, no, sir I can't

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2 accurately define that in the manner
3 you're asking.
4 Q. Can you tell me what a phylloplane mold
5 is, P-H-Y-L-L-O-P-L-A-N-E?
6 A. No, sir.
7 Q. Can you tell me what xerophilic fungi
8 are, X-E-R-O-P-H-I-L-I-C?
9 A. No, sir.
10 Q. Can you tell me the difference between
11 a primary, secondary, and tertiary
12 colonizer of fungi?
13 A. No, sir. I believe that to be
14 information that a mycologist would
15 know. But as I've already stated
16 previously, my training is limited to
17 the acquisition of sampling and the
18 interpretation of that data.
19 Q. Do you know what equilibrium relative
20 humidity is or ERH?
21 A. Yes, I do.
22 Q. What is that?
23 A. That's water activity between materials

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1 in the atmosphere that it's exposed to.
2 Q. Do you know what water activity is
3 which is usually identified as A with a
4 subscript w after it?
5 A. Yes, sir. That's -- that's the amount
6 of water movement between that material

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7 as it's exposed to surroundings.

8 Q. Do you know what the minimum
9 requirement of Aw most fungi require?

10 A. No, sir, I don't.

11 Q. Do you have any knowledge about what
12 kinds of molds grow in what kinds of
13 ERH conditions?

14 A. No, sir.

15 Q. Do you know what a Condition 1,
16 Condition 2, or Condition 3 environment
17 in a home is relative to mold
18 infiltration or contamination?

19 A. No, sir, I'm not familiar with that
20 terminology.

21 (Brief pause)

22 Q. Do you know what primary colonizers
23 require in terms of an Aw level?

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14

1 A. No, sir.

2 Q. How about secondary or tertiary
3 colonizers?

4 A. No, sir.

5 Q. Did you do or calculate ERH or Aw on
6 the Murphy home?

7 A. No, sir.

8 Q. Do you know how to?

9 A. No, sir. I'm not familiar with . . .

10 Q. How many times did you go to the Murphy
11 home?

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- 12 A. I believe I made three visits.
- 13 Q. What did you do on the first visit?
- 14 A. I believe the first visit was more --
- 15 just preliminary walk-through. No
- 16 testing was done.
- 17 Q. Who did you speak with during that
- 18 visit?
- 19 A. Mr. Bonney was there. And to the best
- 20 that I can recall, Ms. Murphy was
- 21 there.
- 22 Q. Did you interview the Murphies?
- 23 A. No, sir, not at that time.

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- 1 Q. Did you interview the Murphies on any
- 2 subsequent visit?
- 3 A. I have some typical questions that I --
- 4 that I ask.
- 5 Q. Where would I find those?
- 6 A. That would be in my field notes, on
- 7 page 6 of my field notes.
- 8 Q. I don't know how you're counting. Oh,
- 9 I'm sorry. In the back, you have
- 10 numbered pages. This isn't the sixth
- 11 page of the exhibit. It's the page
- 12 numbered six towards the back; correct?
- 13 A. That is correct.
- 14 Q. From your field notes, what can you
- 15 tell me you asked them and they
- 16 answered in relation to your interview?

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17 A. I asked them how they normally used
18 their air conditioning system, whether
19 they turn their thermostat up/down day
20 and night or whether they keep it at
21 one consistent temperature. They
22 stated that they typically keep the
23 thermostat at 72 degrees mostly

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1 consistent. I asked them about their
2 use of their exhaust fans -- bathrooms,
3 kitchen exhaust fans. They said
4 normal. The ventilation fan or the
5 auto fan on the thermostat, they said
6 they never use. I asked them if there
7 was any noticeable areas of discomfort.
8 They didn't note any. And I asked them
9 about if there were any bedroom doors
10 that typically stick out in their mind
11 as being closed or opened all the time.
12 They said that they keep all their
13 doors pretty much open.

14 Q. Did you ask them about any water leaks
15 or roof leaks in --

16 A. No, sir.

17 Q. -- your investigation?

18 A. Not that I can recall.

19 Q. If roof leaks did occur, is it fair to
20 say you did not rule those out because
21 you did not investigate them?

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22 A. That wouldn't be fair. I did
23 investigate. I always walk around the

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1 perimeter of the house from the
2 interior looking for evidence of roof
3 leaks as well as around windows and
4 doors.
5 Q. What do you know about any roof leaks
6 in this home?
7 A. At this time, I don't recall.
8 Q. So is it fair to say that your
9 assessment of roof leaks, whether one
10 happened or not in this case, was
11 limited to a visual inspection?
12 A. That would be correct.
13 Q. So if Mr. Murphy testified that there
14 were roof leaks and he even turned them
15 in to an insurance adjuster, that would
16 be news to you?
17 A. Yes, sir. I didn't speak to them about
18 experiencing that kind of a problem.
19 Q. Did you ask the Murphies if they'd ever
20 experienced a significant or any kind
21 of plumbing leak in any of the
22 bathrooms or kitchen?
23 A. No, sir, I did not.

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Page 11

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- 1 Q. Did you rule out plumbing leaks in the
2 bathrooms or the kitchen?
3 A. I don't think they had any effect on
4 what I found in the wall structures.
5 Q. Did you rule them out?
6 A. I didn't investigate them.
7 Q. You never asked the Murphies if they
8 had water leaks like that?
9 A. No, sir, I did not.
10 Q. So it would be news to you if
11 Mr. Murphy testified that there were
12 water leaks in both bathrooms?
13 A. Yes, sir. It still wouldn't change my
14 opinion on the walls.
15 Q. Even if there was a significant leak
16 that caused wicking, that would not
17 change your opinion?
18 A. It still doesn't change my opinion of
19 what I've seen around the perimeter of
20 the house.
21 Q. Fair to say you didn't do any
22 particular invasive testing to rule out
23 water-leak damage as a potential source

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- 1 of mold?
2 A. I did not do any invasive testing,
3 correct, for the purpose of water
4 leakage.
5 Q. And is it fair to say you didn't do any

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- 6 invasive testing to rule out water
7 damage from roof leaks as a potential
8 cause of mold?
9 A. That is correct, no invasive testing.
10 Q. Is it fair to say that you're not a
11 microbiologist?
12 A. That is correct.
13 Q. You're not a mycologist?
14 A. No, sir.
15 Q. Do you know the difference between a
16 microbiologist and a mycologist?
17 A. No, sir.
18 Q. Do you know what kind of training or
19 education is required to become either
20 a microbiologist or a mycologist?
21 A. No, sir.
22 Q. Are you a public health professional?
23 A. Never been identified as that, no, sir.

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- 1 Q. Are you a biologist?
2 A. No, sir.
3 Q. Are you a medical technologist?
4 A. No, sir.
5 Q. Do you have any credentials in
6 industrial hygiene?
7 A. No, sir.
8 Q. How about environmental sciences?
9 A. Can you be more specific what --
10 Q. Are you an environmental scientist?

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11 A. No, sir.

12 Q. All right. Do you have any experience,
13 training, or education in toxicology?

14 A. No, sir.

15 Q. You're not an engineer?

16 A. No, sir.

17 Q. Your building science background
18 relates to HVAC training and
19 experience; correct?

20 A. Partially. In addition to a lot of
21 other stuff having to do with moisture
22 migration, building sciences typically
23 deals with durability, health and

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1 comfort, and energy efficiency.

2 Q. Do you tell people you're a building
3 scientist?

4 A. I've been offered as a building science
5 expert and I've identified myself as a
6 building science expert. I don't
7 really -- I don't know the definition
8 of what building scientist would be. I
9 assume that to be more along the lines
10 of Joseph Lstiburek or John Straube.

11 Q. Do you have any advanced training in
12 building science?

13 A. I've had a lot of training as well
14 as -- the majority of my training has
15 come from work experience.

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16 Q. Well, let me ask it this way. Do you
17 have any college coursework in building
18 science?

19 A. I don't hold any kind of degrees, no,
20 sir.

21 Q. Any college coursework?

22 A. No, sir.

23 Q. I know you went through this with Greg

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1 a few minutes ago. Forgive me for
2 hitting it up again. The credentials
3 that serve as the basis for your expert
4 knowledge in this case, one would be
5 thermography, correct, thermographic
6 imaging?

7 A. It's utilized as a tool in my
8 investigations; that's correct.

9 Q. And how many days' course did you take
10 in thermography?

11 A. Four, four and a half days.

12 Q. Mold remediation, you've done some
13 coursework in that?

14 A. Correct.

15 Q. And how many days of training have you
16 received for that?

17 A. I don't recall specifically. I want to
18 say at least possibly three weeks, two
19 to three weeks, maybe more.

20 Q. All right. What other qualifications
Page 15

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21 do you possess that lend yourself to
22 your expertise for purposes of this
23 case?

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1 A. My understanding, being offered as an
2 expert is someone who is hired or
3 called upon to offer an opinion based
4 on their elevated level of knowledge
5 that's either acquired by education or
6 experience. And the bulk of mine comes
7 from the last ten years of working on
8 this specific issue with manufacturers
9 and the manufactured housing industry.
10 Q. What I'm interested in finding out is,
11 other than the thermographic imaging
12 and the mold remediation, which amounts
13 to something between three to four
14 weeks of training, according to your
15 own testimony, what other formal
16 training have you received that would
17 support your qualification as an expert
18 in this case?
19 A. I think my past experience as a whole,
20 all of the courses that I've taken
21 have -- have contributed in some shape,
22 fashion, or manner to the building
23 science portion of it. The HVAC is a

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- 1 very big portion of it. But, again, I
2 go back to the majority is based on my
3 experience with this issue in the
4 industry.
- 5 Q. Well, I understand that. I'm just
6 trying to figure out of everything else
7 that doesn't come from just experience.
8 I'm talking about formal training,
9 education. I'm just trying to get my
10 arms around that. How long was your
11 coursework to become an HVAC
12 contractor?
- 13 A. Shoot. I mean, I've been doing that
14 for 25 years or longer. The actual
15 coursework --
- 16 Q. Was it a year, two years, six months?
- 17 A. I mean, I've had a lot of periodic
18 training through the years. And, now,
19 as far as actual --
- 20 Q. For the license, what did --
- 21 A. Test to take license, I think I only
22 went through a few days, but I was able
23 to pass the test on the first -- first

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- 1 time.
- 2 Q. Your initial HVAC licensing course was
3 a several-day course?

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4 A. No, it wasn't a course. There was a
5 prep course you could take to prepare
6 you for taking the test for the state.
7 But it wasn't a you go through three
8 days of training and then you take the
9 test. It's an open-book test that you
10 take for the state. And as I -- you
11 can only take it three times in one
12 year, and it's got about an 80-percent
13 failure rate. So it's a -- it's a
14 statewide mechanical test that covers
15 all forms of HVAC, not just the
16 manufactured housing.

17 Q. Well, what other professional
18 coursework have you completed that in
19 your judgment serves as a basis for
20 your expertise in this case?

21 A. The -- the work that I've done with the
22 coursework at the Kansas Building
23 Science Institute was part of that.

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1 Q. How long was that course?

2 A. I believe it was a five-day course.

3 Q. And what was that training for?

4 A. Building -- it's the Building Science
5 Institute. It was a home energy rating
6 certification program that dealt with
7 the exact issues that we're talking
8 about in building science.

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- 9 Q. The exact issue, you mean --
- 10 A. The testing, the utilization of blower
- 11 door, duct blasting, energy movement,
- 12 energy consumption, moisture migration
- 13 through the buildings, the whole -- a
- 14 lot of that is encompassed in that, so
- 15 that's -- it's a building science
- 16 course.
- 17 Q. Any others?
- 18 A. That's -- that's all I can recall at
- 19 this time.
- 20 Q. You are a -- make sure I use the right
- 21 term -- is it certified or licensed
- 22 mold remediator? What's the right term
- 23 to use there?

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27

- 1 A. It's a mold remediation contractor.
- 2 Q. You have --
- 3 A. For the state of Louisiana.
- 4 Q. Do you have one in Alabama?
- 5 A. No, sir.
- 6 Q. Have you ever possessed any kind of
- 7 insurance to do that work, like
- 8 pollution insurance, E&O, work-comp,
- 9 bought a bond?
- 10 A. Yes, sir.
- 11 Q. You've bought some of --
- 12 A. I have -- well, not bought a bond, but
- 13 I have general liability insurance.

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14 Q. For mold remediation?

15 A. It encompasses the -- my HVAC, general
16 contracting, and I believe the error
17 and omissions policy, if I'm not
18 mistaken.

19 Q. How many true mold remediations have
20 you actually been the contractor of
21 record for?

22 A. When you say "contractor of record,"
23 are you asking me how many houses that

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1 I participated in testing -- writing
2 the protocol and then testing when it
3 was done?

4 Q. No. I mean actually to have been the
5 mold remediator, somebody that pulled
6 the permit, did the work.

7 A. There is no permit to be pulled in the
8 state of Louisiana.

9 Q. To do mold remediation work? Are you
10 certain of that?

11 A. That I -- that I am familiar with. The
12 last conversation that I had with
13 Mr. Savant in Baton Rouge, who is the
14 head coordinator over that office, when
15 they initiated their mold remediation
16 licensing program, they went through
17 several phases. At this point in time,
18 it is my understanding that their only

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19 requirement is that if you hold
20 yourself out as a hired mold
21 remediator, you must be licensed
22 through their contracting board,
23 period, end of conversation, that's all

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1 there is. If you hire yourself out as
2 a licensed mold remediator, then you
3 are supposed to hold their contractors
4 license.
5 Q. How many jobs have you served as a
6 licensed mold remediator for where
7 you've actually remediated a building?
8 A. None. The work that I do and the work
9 that I've -- as I've said before, I
10 don't actually tear out the materials
11 and do that type of work. My function
12 in that is doing the testing, the --
13 writing the protocol of how to do it,
14 and then the clearance testing
15 afterwards.
16 Q. Do you know what normal building flora
17 is, F-L-O-R-A?
18 A. Vaguely. But I'm not --
19 Q. Can you tell me what you know about it?
20 A. I'm sorry. Like I said, it's vaguely,
21 but I can't recall at this time.
22 Q. What is normal fungal ecology?
23 A. Normal fungal ecology?

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- 1 Q. Yes, sir.
- 2 A. I don't know that I can specifically
- 3 define that for you here.
- 4 Q. What is the goal of mold remediation?
- 5 A. The goal of mold remediation is to
- 6 remove -- first off, identify and
- 7 eliminate the source of moisture.
- 8 Secondly, it is to remove any affected
- 9 materials and items without -- while
- 10 maintaining containment without -- I
- 11 don't want to say infecting, but
- 12 without contaminating or causing
- 13 cross-contamination exposing other
- 14 areas that have not experienced
- 15 problems. The clearance testing is to
- 16 ensure that the levels are below what
- 17 is considered to be or what was found
- 18 to be normal levels in surrounding
- 19 areas that are believed -- or that have
- 20 not experienced problems.
- 21 Q. What is gypsum made of?
- 22 A. I don't know that I could give you the
- 23 total contents.

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31

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- 1 Q. I mean, where do you get it from?
- 2 where do they get it?

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- 3 A. Where do they get gypsum?
- 4 Q. Yeah. I mean, that's what --
- 5 A. Home Depot --
- 6 Q. -- wallboards are made of.
- 7 A. -- Lowe's.
- 8 Q. Huh?
- 9 A. Home Depot, Lowe's. I don't know.
- 10 Q. Yeah, but where do the people that make
- 11 it get it? I mean, where do you --
- 12 A. I'm not familiar with that process.
- 13 Q. I mean, is it -- do you know anything
- 14 about the chemical composition of
- 15 gypsum?
- 16 A. I know there's salt in it.
- 17 Q. I mean, is it something they make at a
- 18 factory? Is it something they mine out
- 19 of the ground? Is it something --
- 20 A. It's a process, a manufacturing
- 21 process, yes, sir.
- 22 Q. Is it mined?
- 23 A. As I said, I don't know.

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- 1 Q. Would you agree with this statement:
- 2 If in a bulk water leak occurs around
- 3 gypsum, that water can wick up through
- 4 the gypsum?
- 5 A. I would agree with that.
- 6 Q. The lab that you do business with, what
- 7 is your relationship with that lab?

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- 8 A. I -- can you be more specific?
- 9 Q. Well, have you used other labs other
- 10 than the lab in Syracuse?
- 11 A. No, sir. To my knowledge, that's the
- 12 only lab that I've ever used.
- 13 Q. How did you get acquainted with them
- 14 and comfortable to use them?
- 15 A. I don't recall.
- 16 Q. I mean, do you know anybody up there?
- 17 A. No, sir, I don't.
- 18 Q. Have you ever been to the lab?
- 19 A. No, I've not. I've had a lot of
- 20 correspondence with many of the people
- 21 up there, but I've never been to the
- 22 lab and I have no personal relationship
- 23 with anybody there.

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- 1 Q. Do you know if it's an accredited or
- 2 certified lab?
- 3 A. I believe it to be, yes, sir.
- 4 Q. Do you know what certifications or
- 5 accreditations the lab holds?
- 6 A. I'm not familiar with all of them. I
- 7 know that they're accredited through
- 8 the American Industrial Hygienist
- 9 Association, which I believe to be the
- 10 most stringent.
- 11 Q. How many samples have you sent through
- 12 that lab over the years?